IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 2362 OF 1991

Smt. Suman Shankar Unde,
since deceased through her legal
heir and representative;

Shankar Martand Unde,
Occupation-Agriculturist,
R/o Baramati, Wards No.3,
Khatri Estate, Amrai, Tal.
Baramati, Dist. Pune. ..Petitioner.
(Orig.Defendant)

V/s

Shri Shamsunder Lekhraj Khatri,
Occupation-Business,residing
at Khatri Building, Baramati,
District Pune. ..Respondent.
(orig.Plaintiff)

Mr. A.P.Kulkarni i/b A.A. Kumbhakoni for the petitioner.

Mr. R.S. Kate for the respondent.

CORAM : ANOOP V.MOHTA J.

DATE : 3RD AUGUST, 2005.

ORAL JUDGMENT

. The petitioner-tenant has invoked Article 227 of the Constitution of India and sought to challenge the concurrent finding of Courts below, decreeing the suit for possession of the suit premises in favour of the respondent-landlord, on the ground of defaulter, as contemplated under the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short

Bombay Rent Act).

2. The suit premises consists of three rooms and a bath room in the house No.214, situated at Ward No.3, Baramati, District Pune. The tenancy was monthly and the agreed rent was Rs. 35/- per month, excluding education cess and other taxes. There was irregularity in payment of the rent and therefore, by the notice dated 14/5/1989, the respondent-landlord demanded the arrears of rent. The petitioner however, paid Rs. 800/- to the respondent on 30/5/1979. The petitioner preferred a Misc. Application No. 41/1979 for the fixation of standard rent on 18/5/1979. The respondent preferred the Reg. Civil Suit No. 366 of 1982 for the recovery of possession of the suit premises and for recovery of arrears of rent, in the Court of Civil Judge, J.D. Baramati (trial Court). It was resisted by the respondent by filing a written statement. The trial Judge decided the M.A.No. 41/79 along with the suit and had fixed the standard rent at Rs. 50/- per month. On 20th October, 1985, the learned trial Judge after considering the evidence led by the parties and material placed on the record, held that the petitioner-tenant was defaulter for more than six months and on that

ground the decree for possession.

3. The Additional District Judge, Baramati, District Pune,(appellate Court), after considering the rival contentions, as raised by the parties, has confirmed that the respondent-landlord proved, that the petitioner-tenant failed to deposit the standard rent and permitted increases in the Court whenever due and payable and further failed to pay regularly, till the decision of the suit. The appellate Court, however, reduced the standard rent of the suit premises excluding permitted increases at Rs. 35/- per month. The appellate Court therefore, has maintained the decree for possession and further directed to appropriate the rent amount deposited by the petitioner-tenant in the Court, by setting aside the decree for recovery of arrears of rent, as passed by the Trial Court. Therefore, the present writ petition by the petitioner-tenant.

4. Heard the learned Counsel Mr. A.P. Kulkarni, for the petitioner, based on the impugned Judgment and decree dated 8th January, 1991, passed by the appellate Court, he basically contended, that as the standard rent has been fixed by the appellate Court at the rate of Rs.

35/- per month and accordingly, decree for possession of arrears of rent was also set aside, it is necessary to remand the whole matter, before the trial Court to reconsider, after appropriating and adjusting the amount of rent already deposited at the rate of Rs. 35/- per month, the standard rent as fixed by the appellate Court itself. He supported his case by filing details of rent paid before and pending the suit. He relied on **A.I.R. 1964 S.C. 1341 (Vora Abbasbhai Alimahomed V. Jaji Gulamnabi Haji Safibhai),** to substantiate his case, that the petitioner-tenant was always ready and willing to pay the rent and accordingly, in fact deposited the rent in the Court, regularly.

5. The learned Counsel, Mr. R.S.Kate, appearing for the respondent, resisted the above contentions and supported the reasoning given by the Courts below.

6. He backed up his submissions by relying on **A.I.R. 1980 S.C. 954 (Mranalini B. Shah and another V. Bapalal Mohanlal Shah), 1994 (1), All India Rent Control Journal, 263 (S.C.) (Smt. Sulochana Damodar V. Smt. Ratnaprabhu V.. Tople), (1998)(1) Mh. L.J. 282 (Indubai Sidram Mundewadi and others V. Sidramappa**

Basilingappa Kalyanshetti),1980 (1) All India Rent Control Journal (Jagnnath Narayan Potdar V. V.K. Khorade and others). He further contended that in view of the above judgments, and as admittedly, the petitioner failed to make the payment regularly even, during the pendancy of the suit; there is no reason to grant him the protection of the Bombay Rent Act, as insisted by the petitioner-tenant. The irregular payment in spite of the Court’s order, that itself sufficient ground to maintain the order passed by the Courts below for the possession. There is no question of remitting the matter back for considering the issue of arrears or rent, as already concluded and decided by the Courts below.

7. The scheme and purpose of the Bombay Rent Act, and specially Section 12(3) (a) and (b) has been declared by the Apex Court, in Mranalini (Supra) in the following words;

> "The above enunciation, clarifies beyond doubt that the provisions of clause (b) of Section 12(3) are mandatory, and must be strictly complied with by the tenant during the pendency of the suit or appeal, if the landlord’s claim for eviction on the ground of default in payment of rent is to be defeated. The word "regularly"

> in clause (b) of Section 12(3) has a significance of its own. It enjoins a payment or tender characterised by reasonable punctuality, that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, or clocklike precion and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due. Thus, where the rent is payable by the month, the tenant must if he wants to avail of the benefit of the latter part of clause (b), tender or pay it every month as it falls due, or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months- as is the case before us- the Court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the mandate of this clause irrespective of the fact at page SC 957 that by the time the judgment was pronounced all the arrears had been cleared by the tenant."

The Apex Court in **Smt. Sulochana V. Smt. Ratnaprabhu**, reiterated the same in the following words;

> " Merely because it is stated that the Court had permitted the tenant to deposit the said amount, it cannot be construed that the Court had condoned the delay in depositing the same. We are not holding that the Court does possess such a power. On this question, we do not wish to express any opinion though it has been held in Mranalani B.Shah V. Bapalal Mohanlal Shah, that the Court has not such power".

Further apart from the decision in **Jagnnath** (Supra); the Bombay High Court, in **Indubai** (supra) again after

considering the Apex Court's decision in **Mranalini** (Supra) not granted protection to the tenant, who failed to deposit the rent regularly month by month, therefore, maintained the decree for possession in favour of the landlord.

8. In the present case, admittedly, and as borne out from the record, one Misc. Application No.41/79 filed by the petitioner-tenant, by an order Exh.7 the Trial Court had fixed interim standard rent. The petitioner however, not paid the entire arrears of rent within a reasonable time. The tenant failed to pay the rent regularly on or before 10th day of every month, as ordered by the Court. This position remained unrebutted on the record. There is a material on the record to suggest the same though the special schedule Exh.40 that the petitioner-defendant had deposited the rent of Rs. 946.40 on 27.9.1979, then on 22/2/1980 Rs. 143.10, and Rs. 190.80 on 29/10/1980. Thereafter deposited the rent irregularly for period of two months, 4 months or six months or a year during the pendency of the suit. The interim standard rent at the rate of Rs. 41.70 per month was fixed as observed by the court and it was directed to be paid in the trial Court still the

petitioner had not complied with the same. Taking into consideration, both the Courts, have rightly held that the petitioner-tenant had failed to comply with the mandate of the Bombay Rent Act.

9. The subsequent payment pending the suit or appeal, as per Exh.25 from the year 1982 till 1990, no way condone the default already made by the petitioner-tenant by not depositing the rent regularly, in spite of positive direction given by the appellate Court. In this background, and in view of the finding given by the Courts below, based upon the decision given by the Apex Court in **Mranalini** (Supra) and by the Bombay Bombay High Court in **Jagnnath** (Supra) as referred above, there is no case made out by the petitioner to remand the matter back for reconsideration, merely because, the appellant Court has fixed interim standard rent at the rate of Rs. 35/- per month.

10. Having once committed the default, in spite of the mandate of the Bombay Rent act, and the order passed by the trial Court for depositing the rent regularly and considering the scheme of the Bombay Rent Act and the mandate as declared by the Apex Court and the Bombay

High Court and the decisions referred above, and relied by the petitioner, I see there is no reason to grant any premium to such a tenant for their own defaults. The Apex Court in Smt. **Sulochana** (Supra) after considering the earlier decision of Apex Court in **Mranalini** (Supra) also observed that, there is no reason to condone the delay of any kind in depositing the rent irregularly. The mandate of the Act, that if there is irregularity, and in the present case, in spite of the order passed by the Court, there were no regular payments made or deposited by the petitioner-tenant, there is no question granting any benefit or protection to such a tenant. There is no question of condoning said act of the tenant.

11. In **Indubai** (Supra) the Bombay High Court refused to extend the benefit to such tenant, who failed to deposit the rent regularly, as directed by the Court and in that case also such irregular payment of the tenant during the pendency of the appeal, as well as, petition in payment of the rent have been considered and refused to provide the protection under the Bombay Rent Act.

12. The Apex Court's decision in **Vora** (Supra) as

referred and relied by the learned Counsel appearing for the petitioner, no where supports, their case, as the mandate of Section 12(3)(a), as observed by both the Courts below, in the present facts and circumstance of the case have been breached. The tenant who failed to deposit the rent "regularly" in spite of the order passed by the court, cannot be said to be a tenant who is ready and willing to pay the rent regularly.

Therefore, the said decision also no where supports, the case of the petitioner, as sought to be contended.

13. There is nothing on the record further to suggest that there is any irregularity committed by the Courts. On the contrary, both the Courts, after considering the material on the record, granted the decree against the petitioner and in favour of the respondent-landlord on the foundation of default as contemplated under the Bombay Rent Act.

14. Taking into account the above facts and circumstances of the case, and the reasoning given by the Courts, and in view of the above observations, I am

of the view that the reasoning given by the Courts below, is correct, and within the frame work of law and the record. No other point urged.

15. For the above reason, writ petition is dismissed. Rule discharged. Ad interim order stands vacated. However, no order as to cost.

[ANOOP V. MOHTA, J.]

. Later on at the request of the learned Counsel for the petitioner the effect and operation of this judgment is stayed for a period of six weeks.

[ANOOP V. MOHTA, J.]